

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10629 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

MANAJI PUNJAJI AND OTHERS
versus
STATE OF GUJARAT & ORS.

Appearance:

Shri D.M. Thakkar, Advocate, for the Petitioners
Shri T.H. Sompura, Asst. Govt. Pleader, for the Respondents
Shri Prashant G. Desai, Advocate, for Respondent
No. 3

CORAM : MR.JUSTICE A.N.DIVECHA
Date of decision: 12/03/96

ORAL JUDGEMENT

By means of this petition under art. 226 of the Constitution of India, the petitioners have challenged the legality and validity of acquisition of the lands of the petitioners without payment of compensation and for a direction to the respondents to pay adequate compensation

for the lands so acquired with interest at the rate of 18% per annum on the amount of compensation.

2. It appears that each petitioner has a separate cause of action as each petitioner possessed different parcels of land as set out in para 3 of this petition. It is the grievance of the petitioner that each petitioner's land or lands as the case may be has or have been acquired by the respondents. In that case, each petitioner was required to file a separate petition and to pay separate court-fees thereon. However, since this common petition of all the petitioners has been entertained, the petitioners should be directed to pay the deficit court-fees to be payable in each case in view of sec. 18 of the Bombay Court-Fees Act, 1959. Since the petitioner has pressed into service their fundamental rights under articles 14 and 21 of the Constitution of India, each petitioner is liable to pay court-fees in the sum of Rs. 20 each. Since there are 13 petitioners, the court-fees payable thereon would be in the sum of Rs. 260 in all. The petitioner appears to have paid the court fees of Rs. 20 only. The petitioners are directed to pay the deficit court-fees in the sum of Rs. 240 within two weeks from today.

3. It appears that the petitioners have laboured under some misconception of law. The petitioners are under an impression that their lands have been acquired under the Land Acquisition Act, 1898 (the L.A. Act for brief). In fact, the holding of each petitioner is found to be in excess of the ceiling limit and the surplus land has vested in the State Government in each case by virtue of the relevant provisions contained in sec. 10 of the Urban Land (Ceiling and Regulation) Act, 1976 (the ULC Act for brief).

4. Learned Advocate Shri Thakkar for the petitioners has urged that the lands involved in this petition fall outside the purview of the urban agglomeration of Ahmedabad in view of its definition contained in sec. 2(n) of the ULC Act read with Schedule I appended thereto. It may be mentioned that in Schedule I the urban agglomeration for Ahmedabad has been stated to be the limits of municipal corporation together with the peripheral area of 5 Kilometres. On behalf of the respondents, a map prepared by the Ahmedabad Urban Development Authority constituted under the Gujarat Town Planning and Urban Development Act, 1976 with respect to limits of the Municipal Corporation of Ahmedabad as in 1976 is shown to me. It transpires therefrom that the situation of the disputed lands is within the peripheral

area of 5 Kilometres from the municipal limits of the city of Ahmedabad as in 1976. In that view of the matter, it is difficult to countenance the aforesaid submission urged before me by learned Advocate Shri Thakkar for the petitioners that the disputed lands cannot be said to be situated within the urban agglomeration of Ahmedabad. If there is any quarrel with interpretation of the aforesaid map prepared by the Ahmedabad Urban Development Authority, it would involve a disputed question of fact. Such disputed question of fact cannot and need not be resolved under art. 226 of the Constitution of India.

5. In order to assist this Court in a proper manner with respect to the contentions raised in this petition, learned Assistant Government Pleader Shri Sompura has kept an official from the office of the Competent Authority at Ahmedabad (respondent No. 2 herein) present in this Court with the entire record of the case. It transpires therefrom that each petitioner was required and had as such filed the necessary declaration in the prescribed form under sec. 6(1) of the ULC Act. Each declaration was duly processed by respondent No. 2 herein in due course. It appears that each petitioner was served with a draft statement under sec. 8(3) thereof. It appears that no petitioner had raised any objections thereto. The draft statement was therefore treated as the final statement for the purposes of sec. 9 of the ULC Act. The extent of the excess holding of each petitioner beyond the ceiling limit prescribed under the ULC Act was mentioned therein. It transpires from the record that thereafter the necessary notification under sec. 10(1) thereof was issued on 22nd May 1978 with respect to the lands declared surplus in the holding of each petitioner in accordance with the final statement under sec. 9 thereof. It appears that the notification under sec. 10(1) thereof was followed by the notification under sec. 10(3) thereof issued on 27th July 1978. Thereafter the notice under sec. 10(5) of the ULC Act was issued on 16th August 1978 to each petitioner. Since the aforesaid notice under sec. 10(5) of the ULC Act was not complied with, the Collector of Ahmedabad was authorized by the order passed on 26th July 1978 to take possession of the surplus lands from each petitioner. It appears that thereafter possession of the surplus land from each petitioner was taken some time in 1978. It transpires from the record of the case that the amount of compensation to the tune of 25% of the compensation payable was paid to each petitioner in cash. It appears that the compensation under sec. 11 came to be determined some time in 1990 and bonds for the

compensation amount were sent to the petitioner as provided in sec. 14(2) of the ULC Act. These bonds were not accepted by the petitioners. They made a grievance at the governmental level that they were offered very meagre compensation for the lands acquired by the government under their misconception of law that such acquisition was under the L.A. Act. It appears that the State Government could not do anything for redressal of the grievance voiced by the petitioners with respect to the quantum of compensation as the compensation was payable under the ULC Act and not under the L.A. Act. The petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for the aforesaid reliefs.

6. The petitioners cannot be heard in their grievance for several reasons. In the first place, they did not file any objections in reply to the draft statement under sec. 8(3) of the ULC Act. They never challenged the final statement prepared under sec. 9 of the ULC Act though served as transpiring from the record. They did not prefer any appeal thereagainst. The notification under sec. 10(3) of the ULC Act came to be issued on 27th July 1978 with respect to the lands of the petitioners declared surplus thereunder. It cannot be gainsaid that the effect of such notification under sec. 10(3) thereof would be vesting of the surplus land in the State Government free from all encumbrances. Thus the vesting of the surplus land in the State Government took place nearly 18 years ago in 1978. The hands of the clock have moved quite forward and they cannot be moved backward at this belated stage. This petition suffers from the vice of inordinate delay on the part of the petitioners apart from concealment of material and vital facts regarding declaration of their lands surplus under the ULC Act. As transpiring from the tenor of this petition, the petitioners have misrepresented before this Court that their lands were acquired under the L.A. Act and not under the ULC Act. This would be one more ground for rejecting the petition.

6. So far as the amount of compensation payable under the ULC Act is concerned, it is the petitioners' own case that they have not accepted bonds sent to them towards the amount of compensation. The petitioners have not chosen to voice their grievance that there was inordinate delay in determination of the compensation under sec. 11 of the ULC Act. In that view of the matter, the petitioners cannot claim compensation with any interest payable thereon. It is obvious that, since the lands of the petitioners have been declared surplus

under the ULC Act, they would not be entitled to compensation under the L.A. Act.

7. At this stage learned Assistant Government Pleader Shri Sompura states that the bonds sent to each petitioner towards compensation payable under the ULC Act and returned by them can be given back to each petitioner if they are prepared to accept them. If the petitioners are inclined to accept the bonds towards compensation under the ULC Act for the lands declared surplus, they can approach respondent No. 2 for the purpose of collection of such bonds.

8. In view of my aforesaid discussion, I have found no merit or substance whatsoever in this petition. It therefore deserves to be rejected.

9. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The petitioners are directed to pay the deficit court-fees in the sum of Rs. 240 within two weeks from today.
